

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EZIO OGNISSANTI and U.S. POSTAL SERVICE,
POST OFFICE, Fremont, NE

*Docket No. 01-794; Submitted on the Record;
Issued December 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of the right knee for which he received a schedule award.

On December 22, 1998 appellant, then a 37-year-old carrier, injured his right knee when he fell down stairs. The Office of Workers' Compensation Programs accepted the claim for a right lateral meniscus tear and authorized arthroscopic surgery to repair the knee injury.

Appellant submitted various treatment records from Dr. John Lohrberg, a Board-certified family practitioner, dated December 1998 through January 1999; treatment notes from Dr. Randall D. Neumann, a Board-certified orthopedic surgeon, dated January 18, 1999 to May 8, 2000; and a magnetic resonance imaging (MRI) scan dated February 3, 1999. Dr. Lohrberg's treatment notes document the history of appellant's right knee injury and noted draining a substantial amount of fluid from appellant's right knee. Dr. Neumann's treatment notes documented the initial treatment of appellant when his injury occurred. He recommended arthroscopic surgery to repair the torn lateral meniscus. The MRI scan of the right knee dated February 3, 1999, revealed an oblique tear to the undersurface of the central zone of the meniscus the posterior horn medial meniscus.

In a operative report April 19, 1999, Dr. Neumann noted performing an arthroscopy of the right knee with partial medial meniscectomy, debridement and chondromalacia of the patella and medial femoral condyle.

In a letter dated May 16, 2000, Dr. Neumann provided an impairment rating for appellant's right knee. He indicated that appellant had reached maximum medical improvement. Dr. Neumann noted a 15 percent permanent impairment rating for a medial meniscus tear and for chondromalacia Grade III of the medial femoral condyle. He indicated this rating was based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (A.M.A., *Guides*).

In progress notes dated May 17 and November 1, 1999, Dr. Neumann indicated that appellant was healing properly and was fully ambulatory. He indicated that appellant's range of motion was completely normal.

On June 2, 2000 appellant filed a claim for a schedule award for his right knee.

On June 19, 2000 the Office referred appellant's case record to the Office's medical adviser for an evaluation of the extent of any permanent impairment arising from appellant's accepted employment injuries of his right lower extremity in accordance with the A.M.A., *Guides* (4th ed. 1993). By report dated June 19, 2000, the Office medical adviser determined that Dr. Neumann's rating for appellant's schedule award was incomplete. He noted that Dr. Neumann did not report range of motion figures nor provide the raw data for which an impairment rating could be generated. For these reasons, the Office medical adviser recommended referring appellant for an evaluation to another physician for an impairment rating.

On July 17, 2000 the Office referred appellant to Dr. David Diamant, Board-certified in physical medicine and rehabilitation, for an evaluation of the extent of any permanent impairment arising from his accepted employment injuries to his right knee in accordance with the A.M.A., *Guides*. In an August 14, 2000 report, Dr. Diamant indicated that appellant underwent an arthroscopy, partial medial meniscectomy and debridement of chondromalacia of the patella and medial femoral condyle. He noted findings upon physical examination of mild tenderness along the medial joint line; nontender over the lateral joint line; nontender over the collateral ligaments; strength was normal in knee extension and knee flexion; no crepitus; there was no pain with recumbent, passive, medial and lateral gliding of the patella; Clark's sign was negative; varus stress causes no pain; and valgus stress causes mild medial knee pain. The range of motion figures for the right knee were 15 degrees for extension and 125 degrees for flexion which generated no impairment rating.¹ Dr. Diamant utilized section 3.21, diagnosis based estimates, of the A.M.A., *Guides* and rated appellant's permanent impairment of the lower right extremity at two percent for a partial medial meniscectomy and cited Table 64, page 85 of the A.M.A., *Guides* to support his determination.

In a decision dated September 12, 2000, the Office granted appellant a schedule award for a two percent impairment for lower right extremity.

In a letter dated October 25, 2000, appellant requested reconsideration of the Office decision dated September 12, 2000. Appellant also submitted an impairment rating from Dr. Neumann dated October 13, 2000, which was duplicative of his impairment rating submitted on May 16, 2000.

By report dated November 9, 2000, the Office medical adviser determined that Dr. Diamant properly utilized the A.M.A., *Guides* to determine appellant sustained a two percent impairment of the right lower extremity. The Office medical adviser noted Dr. Diamant provided a thorough history and findings upon physical examination and reached his impairment determination in accordance with the A.M.A., *Guides*. The Office medical adviser further noted that Dr. Neumann's rating was not in accordance with the A.M.A., *Guides*. He noted that

¹ See Table 41, page 78 of the A.M.A., *Guides*.

Dr. Neumann did not report findings upon physical examination nor indicate a date of maximum medical improvement.

By decision dated November 16, 2000, the Office determined that the medical evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has no more than a two percent impairment of the right lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges that he is entitled to a schedule award greater than the two percent impairment rating granted by the Office.

In this case, the Office medical adviser determined that the schedule award provided by appellant's treating physician, Dr. Neumann was incomplete. The medical adviser noted that Dr. Neumann did not report range of motion nor provide the raw data, for which an impairment rating could be generated. For these reasons, appellant was referred to Dr. Diamant for evaluation of the extent of any permanent impairment for his accepted knee injury. The Office medical adviser utilized the findings in Dr. Diamant's report to determine appellant's impairment rating for the right lower extremity. He indicated that appellant underwent an arthroscopy, partial medial meniscectomy and debridement of chondromalacia of the patella and medial femoral condyle on April 19, 1999. Dr. Diamant indicated that appellant reached maximum medical improvement as of August 14, 2000. He noted the method for calculating an award based on the diagnosis based estimates, using Table 64, page 85 of the A.M.A., *Guides* (4th ed. 1993). Dr. Diamant indicated that a partial medial meniscectomy was performed, which is equivalent to a two percent impairment rating, taken from Chapter 3, page 84, Table 64 of the A.M.A., *Guides*. Based on Dr. Diamant's findings no additional values would be added for loss of function due to pain and/or loss of sensation, loss due to limited motion or loss due to atrophy/weakness. He determined the final award to be two percent impairment of the right lower extremity.

The Board has carefully reviewed Dr. Neumann's reports dated May 16 and October 13, 2000, which determined appellant's right lower extremity impairment and notes that Dr. Neumann did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁴ Specifically, Dr. Neumann noted a 15 percent

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

permanent impairment rating for a medial meniscus tear and for chondromalacia Grade III of the medial femoral condyle. However, he did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. Dr. Neumann provided no clarification of his impairment rating by revealing his calculations for the rating including the percentage of impairment of the lower extremities using the A.M.A., *Guides*. The Board has determined that a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value.⁵ Additionally, the Office medical adviser noted that Dr. Neumann's impairment rating of 15 percent encompassed impairment for a medial meniscus tear and for chondromalacia Grade III of the medial femoral condyle. The medical adviser properly noted that patellofemoral pain can only be rated through roentgenographic x-rays performed of the knee in accordance with the techniques set forth in Table 62, pages 82 to 83 of the A.M.A., *Guides*. However, Dr. Neumann did not perform roentgenographic x-rays nor did he provide his findings upon examination, which would determine whether the chondromalacia Grade III would be ratable.

The Board finds that the Office medical adviser properly applied Dr. Diamant's findings to the A.M.A., *Guides* in calculating appellant's permanent impairment. The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Diamant's report and reached an impairment rating of two percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a two percent permanent impairment of the right lower extremity. There is no evidence conforming to the A.M.A., *Guides* which supports that appellant has a higher percentage of impairment.

The November 16 and September 12, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).